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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT M.H. DUNN,
RAYMOND K.M. KWOK, and LEV MIRLAS

Appeal 2009-012331
Application 10/727,016
Technology Center 3600

Decided: February 22, 2010

Before ANTON W. FETTING, BIBHU R. MOHANTY, and
KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants seek our review under 35 U.S.C. § 134 of the final rejections of claims 19-27. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.¹

THE INVENTION

Appellants' claimed invention relates to a computer-implemented method for filling orders using an order management system. The orders are filled from fulfillment centers or suppliers enrolled in electronic marketplaces. (Abs.).

Independent claim 19, which is deemed to be representative, reads as follows:

19. A computer-implemented method for filling orders for items using an order management system, the method comprising the steps of:
 associating one or more items in an order with one of a set of fulfillment centre objects of an order management system for representing one or more fulfillment centres and one or more electronic marketplaces using a release to fulfillment object,
 sending fulfillment instructions relating to one or more items associated with one of a first subset of fulfillment centre objects to a corresponding fulfillment centre, wherein the first subset of the fulfillment centre

¹ Our decision will make reference to the Appellants' Appeal Brief ("Br." filed Dec. 8, 2008) and the Examiner's Answer ("Ans.," mailed Mar. 17, 2009).

objects being defined for representing corresponding fulfillment centres, and
sending ordering information relating to one or more items associated with one of a second subset of fulfillment centre objects to a corresponding electronic marketplace, wherein the second subset of the fulfillment centre objects being defined for representing corresponding electronic marketplaces.

THE REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Hirth et al. 2003/0171962 A1 Sep. 11, 2003

The Examiner rejected claims 19-27 under 35 U.S.C. § 103(a) as being unpatentable over Hirth.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

Did the Examiner err in finding claims 19-27 to be obvious over Hirth under 35 U.S.C. § 103(a)?

FINDINGS OF FACT

The record supports the following findings of fact (FF) by at least a preponderance of the evidence. *In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) (explaining the general evidentiary standard for proceedings before the Office).

Claim Interpretation

1. Appellants' Specification describes "fulfillment centre objects" as "... representing the one or more fulfillment centres and the one or more electronic marketplaces." (p. 4, ll. 10-12).

2. Appellants' Specification describes "fulfillment centres" as a warehouse with an associated fulfillment system. (p. 10, ll. 22-24).

3. Appellants' Specification describes "electronic marketplaces" as an automated marketplace in which suppliers may bid to fill orders placed using a trading mechanism. The electronic market place may be hosted by a vendor's system or a third party. (p. 14, ll. 18-23).

4. Appellants' Specification describes a "release to fulfillment object" as a flag that the item should be taken from inventory and sent to a customer. (p. 12, ll. 20-27).

Hirth

5. Hirth is directed to a method for supply chain fulfillment coordination which coordinates the fulfillment of an order for one or more items between a first party and a second party through a fulfillment coordination engine. (Abs. and ¶ [0038]).

6. Hirth discloses that:

. . . the fulfillment coordination engine: (1) receives the order; (2) breaks the order into one or more work packages; (3) determines whether the order should be fulfilled entirely within the organization of the recipient of the order and/or by using external organizations entirely or in part; and (4) assigns the work packages to respective partners.

(¶ [0038])

7. Hirth describes that the fulfillment coordination engine splits the original logistic request into different logistic activities or can consolidate comparable activities from different logistics objects into one or more common logistics orders. (¶ [0074]).

8. Hirth describes that the fulfillment coordination engine controls the actual fulfillment of a sales order and shipment. (¶¶ [0048] and [0051]).

9. Hirth describes that the fulfillment coordination engine can be used by a company to implement a distributed order management fulfillment of a customer order. (¶ [0140]).

10. Hirth describes that the fulfillment coordination engine can be implemented as part of a corporate system for order fulfillment which allows the system to receive a customer order having variables, such as customer information, supplier, order type, system, product, packaging, preferences, and tracking. (¶ [0145]).

11. Hirth describes that the fulfillment coordination engine assigns priorities based on a set of rules or parameters using an analysis of past performance, cost, turn-around time, quality, etc. These rules set the priority

for whether a company will use partner A, B, or C for fulfillment. (§ [0041]).

12. Hirth describes that product selection or substitution service selects the correct product for an order based on the type of stock on hand or can substitute products based on predefined parameter. (§ [0085]).

13. Hirth describes interfaces to different inbound and outbound order systems used with the fulfillment coordination engine that allows a user to receive status information and make subsequent changes in the orders. (§ [0088]).

14. Hirth describes that the fulfillment coordination engine can compile goods into a single shipment to a customer from a work task which uses both internal and external partners to supply the goods. (§ [0043]).

PRINCIPLES OF LAW

Obviousness

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See*

also KSR, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

ANALYSIS

Claims 19-27 rejected under 35 U.S.C. § 103(a) as being unpatentable over Hirth.

Independent claim 19

Appellants argue that the logistic object disclosed in Hirth does not represent a fulfillment center and an electronic marketplace. (Br. 4). We are not persuaded by Appellants’ arguments and agree with the Examiner that Hirth discloses a fulfillment coordination engine used to coordinate the fulfillment of one or more orders. (FF 5). The coordination engine disclosed in Hirth determines whether the order should be fulfilled entirely within an organization (i.e., vendor) or through an external organization (i.e., third party, partner). (FF 6).

Similar to the Examiner, we interpret the use/selection of internal organizations to represent use of “fulfillment centres.” Likewise, we interpret the use/selection of external organizations to fulfill an order through a distributed order management system to represent the use of “electronic marketplaces” since the order can be fulfilled by multiple partners within the marketplace based upon priority rules. (FF 9, 10). This interpretation is commensurate with the scope of Appellants’ Specification which broadly describes “fulfillment centres” as warehouses with an associated fulfillment systems and “electronic marketplaces” as automated

marketplaces hosted by either a vendor's system (i.e., internal organization) or a third party (i.e., external organization, partners) where suppliers may bid to fill orders placed using a trading mechanism. (FF 2, 3). Thus, Hirth makes obvious a fulfillment center and an electronic marketplace, as recited in claim 19. Accordingly, Appellants' arguments are not persuasive as to error in the rejection.

Additionally, Appellants argue that Hirth does not teach using a release to fulfillment object, as recited in claim 19. (Br. 5). We are not persuaded by Appellants' argument and find that following the determination as to whether to fulfill the customer's order within the organization or using an external organization, discussed *supra*, the fulfillment coordination engine controls the actual fulfillment of the sales order through one or more of the internal or external organizations (i.e., partners) and ships the order to a customer. Thus, commensurate with Appellants' Specification and broadly recited in claim 19, Hirth makes obvious a release to fulfillment object. (FF 4). Therefore, Appellants' arguments are not persuasive as to error in the rejection.

Appellants next argue that Hirth fails to teach, "... sending ordering information relating to one or more items associated with one of a second subset of fulfillment center objects to a corresponding electronic marketplace," as recited in claim 19. (Br. 6). We are not persuaded by Appellants' argument and find that as discussed *supra*, Hirth's coordination engine determines whether the order should be fulfilled internally or externally. (FF 6). Thus, a decision to use an external organization to fulfill a customer order would require the coordination engine to process the order

from one of the possible multiple partners using the distributed order management system disclosed in Hirth which as discussed *supra*, we interpret as an “electronic marketplace.” (FF 9). This is commensurate with the definition of “electronic marketplace” used in Appellants’ Specification. (FF 3), Therefore, we find that Hirth makes obvious the step of “sending ordering information relating to one or more items associated with one of a second subset of fulfillment centre objects to a corresponding electronic marketplace,” as recited in claim 19. Accordingly, Appellants’ arguments are not persuasive as to error in the rejection.

Lastly, the Examiner asserted that the limitation “wherein the second subset of the fulfillment centre objects being defined for representing corresponding electronic marketplaces,” recited in claim 19, is directed to non-functional descriptive material. (Ans. 4). Appellants have countered that the limitation is indeed directed to descriptive material. (Br. 6). We find no need to address whether the limitation is directed to non-functional descriptive material since, as discussed *supra*, we find Hirth teaches fulfillment centers and electronic marketplaces which define the fulfillment center objects. (FF 1, 6, 9).

Claim 20

Appellants argue that Hirth fails to teach tracking orders in the electronic marketplace. (Br. 8). We are not persuaded by Appellants’ argument and find that Hirth discloses that the fulfillment coordination engine can receive customer order information which includes tracking information. (FF 10). Thus, for these reasons and the reasons discussed

supra, we find that Hirth makes obvious the limitations recited in claim 20. Therefore, Appellants' argument is not persuasive as to error in the rejection.

Claim 21

Appellants argue that Hirth fails to teach the use of inventory and fulfillment center priority. (Br. 9). We are not persuaded by Appellants' argument and find that Hirth discloses that the fulfillment coordination engine assigns priorities based on a set of rules of parameters using an analysis of past performance, cost, turn-around time, quality, etc. (FF 11). Thus, based on these rules the fulfillment coordination engine would determine whether the order would be fulfilled internally or externally based on different priorities. (FF 6). Therefore, for these reasons and the reasons discussed *supra*, we find that Hirth makes obvious the limitations recited in claim 21. Accordingly, Appellants' argument is not persuasive as to error in the rejection.

Claim 22

With respect to claim 22, although Appellants have argued claim 22 separately, Appellants simply restate the limitation found in this claim, and avers that such limitation is not found in the Hirth reference for the same reasons as those discussed in the independent claim, *supra*. (Br. 10). Presenting a statement which merely points out what a claim recites is not considered to be an argument for the separate patentability of the claims. 37 C.F.R. § 41.37(c)(1)(vii)(2007). We therefore treat independent claim 22 as

with independent claim 19 and thus find no error in the rejection of dependent claim 22 under 35 U.S.C. § 103(a) as unpatentable over Hirth.

Claim 23

Appellants argue that Hirth fails to teach the step of pre-selecting items for association based on inventory and fulfillment center priority. (Br. 10-11). We are not persuaded by Appellants' argument and find that as discussed *supra*, Hirth's fulfillment coordination engine assigns priorities for the association of items based on a set of rules. (FF 11). Additionally, Hirth's system selects the correct products for an order based on the type of stock on hand or alternatively, can substitute products based on predefined parameters. (FF 12). Therefore, for these reasons and the reasons discussed *supra*, we find that Hirth makes obvious the limitations recited in claim 23. Accordingly, Appellants' argument is not persuasive as to error in the rejection.

Claim 24

Appellants argue that Hirth fails to teach “. . . the step of an administrator using the administrator interface to confirm or over-ride the pre-selection of items for association with one of the set of fulfillment centre objects.” (Br. 11-12). We are not persuaded by Appellants' argument and find that Hirth describes interfaces to different inbound and outbound order systems used with the fulfillment coordination engine that allows a user to receive status information and make subsequent changes in the orders. (FF 13). Thus, Hirth's system allows a user to review the order or confirm the

status of the order and then if necessary make changes to the order. Therefore, for these reasons and the reasons discussed *supra*, we find that Hirth makes obvious the limitations recited in claim 24. Accordingly, Appellants' argument is not persuasive as to error in the rejection.

Claim 25

Appellants argue that Hirth fails to teach “. . . the step of grouping items and in which the step of sending ordering information further comprises maintaining the grouping of the items when information corresponding to the grouped items is sent to the corresponding electronic marketplace.” (Br. 12-13). We are not persuaded by Appellants' argument and find that as discussed *supra*, Hirth's coordination engine determines whether an order should be fulfilled entirely within an organization or through an external organization. (FF 6). Additionally, the fulfillment coordination engine is capable of compiling goods into a single shipment to a customer from a work task (i.e., order) which uses both internal and external partners to supply the goods (i.e., items). (FF 14). Therefore, for these reasons and the reasons discussed *supra*, we find that Hirth makes obvious the limitations recited in claim 25. Accordingly, Appellants' argument is not persuasive as to error in the rejection.

Claims 26 and 27

Appellants do not separately argue claims 26 and 27 which depend from claim 19, and so have not shown that the Examiner erred in rejecting

claims 26 and 27 under 35 U.S.C. § 103(a) as being unpatentable over Hirth for the same reasons we found as to claim 19, *supra*.

CONCLUSION OF LAW

We conclude that the Examiner did not err in finding claims 19-27 to be obvious over Hirth under 35 U.S.C. § 103(a).

DECISION

The decision of the Examiner to reject claims 19-27 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2007).

AFFIRMED

ack

cc:

IBM CORP. (WSM)
c/o WINSTEAD SECHREST & MINICK P.C.
P.O. Box 50784
Dallas, TX 75201